

Docket No.:
RASMUS 9.0-001
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ole-Bendt Rasmussen

Application No.: 10/787,214

Confirmation No.:

Filed: February 27, 2004

Art Unit:

For: FOOD PRODUCT WHICH ARTIFICIALLY
HAS BEEN GIVEN A CELL-LIKE
STRUCTURE BY COEXTRUSION OF
SEVERAL COMPONENTS, AND METHOD
AND APPARATUS FOR MANUFACTURING
SUCH FOOD PRODUCT

Examiner:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION BY WILLIAM J. DANIEL

I, WILLIAM J. DANIEL, do declare as follows:

1. I am the attorney of record in connection with the captioned patent application, as well as the parent Application No. 09/926,310. I have been acting as patent counsel for my client, Mr. Rasmussen, the sole named inventor of the '214 application, for more than 25 years.

2. Upon receipt of the Notice of Allowability in connection with the '310 application, I conferred with Mr. Rasmussen. In view of Mr. Rasmussen's desire to make changes to the application, I advised him that a post-allowance amendment under Rule 312 would be necessary. I prepared the amendment and filed it with the Patent Office on February 12, 2004. In a telephone conference on February 24, the Examiner informed me that

she had decided to decline entry of the amendment. I then conferred further with Mr. Rasmussen and explained to him that it would be necessary to re-file the case in order to have the Examiner consider the amendments we wished to make.

3. Mr. Rasmussen agreed with my advice to re-file the '310 application. At the same time, he impressed upon me his desire to get an issued patent quickly, because he believed he would soon be involved in discussions with a potential licensee. Knowing this, it was my intention to re-file the '310 application as a Continued Prosecution Application (CPA). In the course of preparing the CPA documents, I selected the transmittal form entitled REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION (PTO/SB/13/PCT(08-03) (hereinafter "the transmittal form"), based on my belief at the time that it was the most appropriate because the '310 application was a national stage entry (pursuant to 35 U.S.C. §371) of Mr. Rasmussen's international application, PCT EP 00/03713. In order to tailor the transmittal form that I selected to my intent to continue prosecution by way of a CPA, I modified the transmittal form, specifically paragraph 11 on page 2, to contain the statement, "...utilize the file wrapper and contents of prior SN 09/926,310, filed 10/11/01 and is currently pending & abandoned the latter as of this fi[ling]." I included this statement to meet the requirements in Rule 53(d)(2)(iv) and (v). Thus, as of February 27, 2004, when I filed the transmittal form, I believed that I had met all of the requirements necessary for a complete application filing in the way in which I intended to have it filed.

4. It was not until I received the NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION, which was mailed on May 24, 2004, that I came to appreciate that because I had not specifically identified the '214 application as a "CPA" or as an application filing under Rule 53(d), the Patent Office instead considered the application as a continuing application pursuant to Rule 53(b). Although I expressed my intention to file a CPA by inserting the above-

Application No.: 10/787,214

Docket No.: RASMUS 9.0-001


quoted statement in paragraph 11, I did not edit page 1 of the transmittal form by changing "Rule 53(b)" to "Rule 53(d)," thus making my intention unequivocally clear.

5. At no time during my representation of Mr. Rasmussen in connection with the '310 and the '214 applications, did he ever communicate to me, nor did I ever understand or believe that he intended to abandon either application or to terminate an effort to obtain one or more valid patents covering the inventions described in the '310 application. To the contrary, he repeatedly impressed upon me his desire to obtain an issued patent as soon as practical.

I declare under penalty of perjury that the foregoing statements are true and correct.

Date:

4/23/2004


WILLIAM J. DANIEL
Reg. No. 16,585

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Ole-Bendt Rasmussen

Application No.: 10/787,214

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SEVERAL COMPONENTS, AND METHOD
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SUCH FOOD PRODUCT

Examiner:

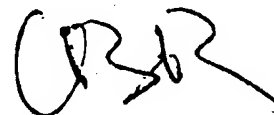
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF APPLICANT OLE-BENDT RASMUSSEN

I, OLE-BENDT RASMUSSEN, do declare as follows:

1. I am the sole named inventor of United States patent application number 10/787,214 and its parent, Application No. 9/926,310.

2. My attorney, William Daniel, informed me that he received a Notice of Allowability for the '310 application. I expressed my desire to make changes to the application. Mr. Daniel explained to me that we would have to file a post-allowance amendment. On February 24, 2004, Mr. Daniel informed me that the Examiner decided not to enter the amendment. After conferring with Mr. Daniel, I ultimately agreed with his advice to re-file the application. Although I am unfamiliar with the U.S. Patent Office rules, or for that matter, the specific procedures for re-filing patent applications, I did impress upon Mr. Daniel

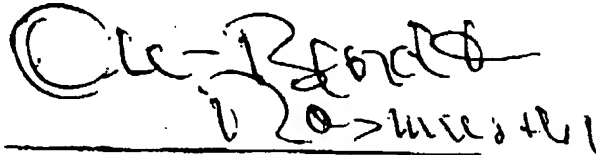


that in view of my present business plans, it was my desire to get an issued patent as quickly as practical. Mr. Daniel did not explain to me exactly how he intended to re-file the '310 application, nor did I review any documents that Mr. Daniel prepared for this purpose, prior to the time he filed them with the Patent Office.

3. At no time did I ever expressly state or imply to Mr. Daniel an intent to abandon the '310 application without filing a continuation application, or otherwise forfeit or surrender my patent rights, or cease my efforts in obtaining one or more patents directed to the inventions described in the '310 patent application.

I declare under penalty of perjury that the foregoing statements are true and correct.

Date: July 22, 2004


OLE-BENDT RASMUSSEN

13281 U.S. PTO

PTO/SB/13/PCT (08-03)

Approved for use through 07/31/2008. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION

DOCKET NUMBER	ANTICIPATION CLASSIFICATION OF THIS APPLICATION		PRIOR APPLICATION EXAMINER	ART UNIT
3330	CLASS 426	SUBCLASS 94	N. BHAT	I761

Address to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This is a request for filing a ☒ continuation ☐ divisional application under 37 CFR 1.53(b) of pending prior international application Number PCT /EP00/03713, filed on 4/13/00, entitled FOOD PRODUCT WHICH ARTIFICIALLY HAS BEEN GIVEN A CELL LIKE STRUCTURE ETC., which designated the United States and was filed in the U.S. w/ SN09/926,310 on 10/11/01

Note: 37 CFR 1.53(d) cannot be used to file a continuation or divisional application of an international application which has not entered the national stage.

CLAIMS	(1) FOR	(2) NUMBER FILED	(3) NUMBER EXTRA	(4) RATE	(5) CALCULATIONS
TOTAL CLAIMS (37 CFR 1.16(c))		70 - 20 =	50	x \$18.00 =	\$900.00
INDEPENDENT CLAIMS (37 CFR 1.16(b))		5 - 3 =	2	x \$6.00 =	172.00
MULTIPLE DEPENDENT CLAIMS (if applicable) (37 CFR 1.16(d))				x \$----- =	
				BASIC FEE (37 CFR 1.16(a))	870.00
				Total of above Calculations =	1,842.00
				Reduction by 50% for filing small entity (Note 37 CFR 1.27).	
				Total =	1,842.00

- Enclosed are the specification, claims and drawing(s).
- ☐ Applicant claims small entity status. See 37 CFR 1.27.
- ☒ The Director is hereby authorized to charge any fees which may be required under 37 CFR 1.16 and 1.17, or credit any overpayment of Deposit Account No. 04-0070. A duplicate copy of this sheet is enclosed.
- ☒ A check in the amount of \$ 1,842.00 is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☒ Application Data Sheet is enclosed. See 37 CFR 1.76.
- ☒ If a CONTINUING APPLICATION, check appropriate box, and supply the requisite information below and in the first sentence of the specification following the title, or in an Application Data Sheet under 37 CFR 1.76:
☒ Continuation ☐ Divisional of prior PCT application No.: EP00/03713, filed 4/13/00
[Page 1 of 2]

This collection of information is required by 37 CFR 1.53(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR FILING A CONTINUATION OR DIVISION OF AN INTERNATIONAL APPLICATION8. ☒ A declaration under CFR 1.63 is enclosed. ^{copy}9. ☒ Priority of foreign application number SEE DATA SHEET filed on _____
in _____ is claimed under 35 U.S.C. 119(a)-(d).☐ The certified copy is enclosed.10. ☒ A preliminary amendment is enclosed.11. ☐ Also enclosed:

~~PLEASE UTILIZE THE FILE WRAPPER & CONTENTS OF PRIOR SN09/926,310,~~
~~FILED 10/11/01 and is currently pending. ABANDON THE LATTERS OF THIS FIL.DT~~
Address all future correspondence to: (May only be completed by applicant, or attorney or agent of record).

WILLIAM J. DANIEL

6100 WOODLAND TERRANCE, MCLEAN, VA ~~XXXXXXXXXX~~ 22101-4225

WARNING: Information on this form may become public. Credit card information should not
be included on this form. Provide credit card information and authorization on PTO-2038.

2/27/2004

Date


Signature703-536-4361
Telephone NumberWILLIAM J. DANIEL

Typed or printed name

16,585

Registration Number, if applicable

☐ Inventor(s)/Applicant(s)☐ Assignee of the entire interest. See 37 CFR 3.71. Statement
under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).☒ Attorney or agent of record☐ Filed under 37 CFR 1.34(a)
Registration number if acting under 37 CFR 1.34(a) _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☐ *Total of _____ forms are submitted.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/787,214	02/27/2004	Ole-Bendt Rasmussen	3330

WILLIAM J. DANIEL
 6100 WOODLAND TERRACE
 MCLEAN, VA 22101-4225

CONFIRMATION NO. 5707

FORMALITIES LETTER



OC000000012749738

Date Mailed: 05/24/2004

NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

A filing date has NOT been accorded to the above-identified application papers for the reason(s) indicated below.

All of the items noted below and a newly executed oath or declaration covering the items must be submitted within **TWO MONTHS** of the date of this Notice, unless otherwise indicated, or proceedings on the application will be terminated (37 CFR 1.53(e)). Replies should be mailed to: Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

The filing date will be the date of receipt of all items required below, unless otherwise indicated. Any assertions that the item(s) required below were submitted, or are not necessary for a filing date, must be by way of petition directed to the attention of the Office of Petitions accompanied by the \$130.00 petition fee (37 CFR 1.17(h)). If the petition states that the application is entitled to a filing date, a request for a refund of the petition fee may be included in the petition. Petitions should be mailed to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria VA 22313-1450.

- The specification is missing.
 A complete specification as prescribed by 35 U.S.C. 112 is required.

Replies should be mailed to: Mail Stop Missing Parts
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

ma
 Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE